

MAR 16 2004

Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

<b>In re ENRON CORPORATION</b>	§	<b>MDL 1446</b>
<b>SECURITIES, DERIVATIVE</b>	§	<b>and Consolidated, Related</b>
<b>&amp; "ERISA" LITIGATION</b>	§	<b>and Coordinated Cases</b>
<b>MARK NEWBY, ET AL.,</b>	§	
<b><i>Plaintiffs,</i></b>	§	
<b>v.</b>	§	<b>Civil Action no: H-01-3624</b>
<b>ENRON CORPORATION, ET AL.,</b>	§	<b>and Consolidated, Related Cases</b>
<b><i>Defendants.</i></b>	§	<b>and Coordinated Cases</b>

**MOTION OF CERTAIN OFFICER DEFENDANTS  
FOR CONFIDENTIALITY ORDER FOR THIRD PARTY DOCUMENTS  
(UNOPPOSED BY LEAD PLAINTIFF NEWBY)**

Defendants Cindy Olson, Lawrence G. Whalley, Mark A. Frevert, Mark E. Koenig and Steven J. Kean (collectively "Officer Defendants") respectfully submit this Motion for Confidentiality Order for Third Party Documents with respect to documents that will be produced by a multitude of third parties in response to subpoenas issued by the Officer Defendants as well as all other parties to this case. In further support of this Motion, the Officer Defendants respectfully show this Court the following:

1. The Officer Defendants have conferred with Lead Plaintiff in *Newby*, and Lead Plaintiff has represented to the Officer Defendants that it does not oppose this Motion.
2. As this Court is well aware, the Enron securities litigation is extremely complex. In its First Amended Consolidated Complaint, Lead Plaintiff made allegations in connection with

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dozens of transactions and projects over several years. In order to defend against these claims, these Officer Defendants, as well as other insured officer and director defendants, have issued numerous subpoenas to third parties. Officer Defendants anticipate other parties in the Action will also subpoena third parties' documents.

3. The Order Establishing Document Depository entered by this Court in October, 2002, provides that all documents produced by a third party pursuant to any subpoena by a party to this litigation shall be included in the electronic depository. When informed of this fact, many of these third parties have indicated that some of the material responsive to the subpoenas contains proprietary and/or confidential information, such as account numbers, transaction data, account balances, and proprietary information; therefore, they have refused to produce such material except pursuant to a confidentiality order. The Officer Defendants anticipate this will be the case for most third parties from whom documents are subpoenaed in this litigation.

4. Federal Rule of Civil Procedure 26(c) provides that a court may, for "good cause shown . . . make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense." FED. R. CIV. P. 26(c). Further, "Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehard*, 467 U.S. 20, 36 (1984).

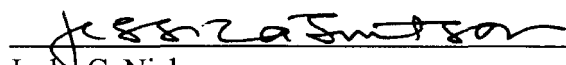
5. While the Officer Defendants cannot say whether any particular document that they have not yet seen is worthy of protection, the Officer Defendants recognize that third parties responding to outstanding subpoenas or future subpoenas have a valid interest in protecting against dissemination of proprietary and confidential information. If such information were publicly disclosed and disseminated, it could be misused by others in any number of ways. The harm that

could befall these third parties by disclosure of proprietary and confidential information that is worthy of protection outweighs public interest (if any) in that information. As such, the Court should protect this information pursuant to Rule 26(c).

6. For the foregoing reasons, the Officer Defendants respectfully request that the Court enter the proposed Confidentiality Order for Third Party Documents (attached hereto), which addresses the use and filing of all documents produced by all third parties.

7. Nothing in the proposed Confidentiality Order for Third Party Documents shall prevent any party to the Consolidated Actions (including but not limited to the Lead Plaintiff in *Newby*) from subsequently challenging a Third Party's designation of the documents as confidential (including but not limited to seeking appropriate relief from the Court).

Respectfully submitted,



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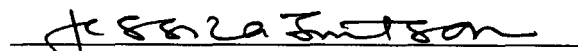
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 16 day of March, 2004, a true and correct copy of the foregoing document was served on all counsel of record by posting said document in .PDF format to the <http://www.esl3624.com> website.

  
Jessica L. Wilson